**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7334 OF 2007**

Ramesh Vasantrao Desai & Anr. .... Petitioners

Vs.

Pradeep Vasantrao Desai & Ors. .... Respondents

Mr. M.S. Karnik i/b Ms. Leena Patil for the Petitioners
Mr. A.M. Kulkarni for the Respondent no. 1.

**CORAM : A.P. DESHPANDE, J.**
**DATE : 26TH OCTOBER, 2007**

P.C.

1) Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

2) The petitioner is the original plaintiff who had filed in all five suits which are being tried together. The Trial Court has passed an order below Exhibit 1 forfeiting the plaintiff's right to lead the evidence and further direction is issued to the defendants to enter into the witness box for leading evidence on the next date. The said impugned order is dated 25/7/2007. The Petitioner thereafter filed a Review Application and the same came to be dismissed by an order dated 24/08/2007. These two orders are challenged by

filing the present petition mainly contending that if the opportunity to lead the evidence is denied to the Plaintiff-Petitioner, the same is bound to result in mis- carriage of justice and cause irreparable loss to the Plaintiff- Petitioner.

3) Learned Counsel for the respondents submits that the suit is of the year 1994 and the same is being unnecessarily prolonged on account of non co-operative attitude on the part of the Plaintiff-Petitioner. The anxiety of the respondents is to have the suit decided as expeditiously as possible, as the High Court has expedited the hearing of the matter here before. Both the parties are in agreement that the impugned orders be quashed and set aside and the Petitioners be directed to file an affidavit of examination- in- chief on or before 12th November 2007. The learned counsel for the Petitioner assures this Court that the affidavit of examination-in -chief will be filed on or before 12th November 2007 and the petitioners will not seek any adjournment in the Trial Court and shall extend the co-operation in the matter.

4) In view of the consent of the parties, without recording any reasons, the impugned orders dated 25/7/2007 and 24/8/2007 are quashed and set aside. The petitioner is directed to file an

affidavit of examination-in-chief on or before 12th November 2007 and the Trial Court shall proceed with the trial of the suit in accordance with law and dispose of the same as expeditiously as possible.

5) Rule made absolute in above terms.

**(A.P. DESHPANDE, J.)**